SUPREME COURT OF THE UNITED STATES.

No. 336.

THE STEAMER GENERAL BEAUREGARD, HER TACKLE, ETC., JOHN R. CARROLL, CLAIMANTS,

VS.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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1 *Libel of information.—Filed July* 8, 1865.

To the honorable the judges of the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the United States for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court, in his own proper person, in the name and behalf of the said United States of America, and Charles Black, sr., informant, against the steamer Gen'l Beauregard, her tackle, apparel, &c., hereinafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

I. That Cuthbert Bullitt, esq., marshal of the United States for the said district, under written authority given him by the said attorney, in compliance with instructions issued by the Attorney General of the United States to the district attorneys thereof, and by virtue of the act of Congress approved on the sixth day of August, in the year of our Lord one thousand eight hundred and sixty-one, entitled "An act to confiscate property used for insurrectionary purposes," heretofore, that is to say, on the 29th day of June, in the year one thousand eight hundred and sixty-five, seized as forfeited to the United States, at New Orleans, within said district, and within the jurisdiction of this court, the steamer Gen'l Beauregard, her tackle, apparel, furniture, machinery, &c.

2 II. That by the act of the Congress of the United States, approved August 6, 1861, entitled "An act to confiscate property used for insurrectionary purposes," it was provided "that if, during the present or any future insurrection against the government of the United States, after the President of the United States shall have declared, by proclamation, that the laws of the United States are opposed, and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person or persons, his, her, or their agent, attorney, or employee shall purchase or acquire, sell, or give any property of whatever kind or description, with intent to employ the same, or suffer the same to be used or employed in aiding, abetting, or promoting such rebellion or resistance to the laws, or any person or persons engaged therein; or if any person or persons, being the owner or owners of any such property, shall knowingly use or employ, or consent to the use or employment of the same as aforesaid, all such property is hereby declared to be lawful subject of prize and capture wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned."

III. That the President of the United States did, on the 15th of April, 1861, declare by proclamation "that the laws of the United States are opposed, and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law;" and

that on the 16th of August, 1861, he did reiterate said proclamation, and did declare that "such insurrection" still existed, and had not been suppressed.

IV. 1. That the property herein above described was used and employed knowingly by the owner or owners thereof in aiding, abetting, or promoting the said insurrection and resistance to the laws, within the meaning of the said act of Congress, after the approval of the said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861, by being used in transporting troops of the so-called Confederate States, in armed rebellion against the government of the United States, and transporting munitions of war and supplies for the said troops.

2. That the property herein described was used and employed knowingly, by the owner or owners thereof, in aiding and abetting persons engaged in the said insurrection and resistance to the laws, within the meaning of the said act of Congress, after the approval of said act, and after the public proclamations of the President above mentioned, and after the 16th day of August, 1861, by the transportation of troops of the so-called Confederate States, in insurrection against the government of the United States, and in transporting munitions of war and supplies for the use of said troops.

3. That the said property was purchased and acquired, and sold and given, by the owner or owners thereof, or by his, her, or their agent or employee, with intent to use or employ the same for the purpose of aiding, abetting, or promoting the said insurrection and resistance to the laws, after the approval of said act, and after the public proclamations above mentioned, and after the 16th day of August, 1861, by being used in transporting soldiers of the so-called Confederate States, in insurrection against the government of the United States.

4. That the owner or owners of the said property did knowingly consent to the use or employment of it for the purpose of aiding, or abetting, or promoting said insurrection and resistance to the laws, or of aiding, abetting, or promoting persons engaged therein, after the approval of said act, and after the proclamations above mentioned, and after the 16th day of August, 1861, by permitting the use of the property as aforesaid.

5. That the owner or owners of said property, his, her, or their agent or employee, did suffer said property to be used or employed in aiding, abetting, or promoting the insurrection proclaimed by the President as aforesaid, and in aiding, abetting, or promoting a person or persons engaged in said insurrection, after the approval of act above mentioned, and after the proclamation of the President, duly made public on the 16th day of August, 1861, by permitting the use of the property as aforesaid.

V. That by reason of the premises the property herein described became and was forfeited to the United States, and ought to be confiscated and condemned to the use of the said United States as enemy property.

Wherefore the said attorney, in the name and behalf of the United

States of America, prays that process of monition may issue against the said property and the owner or owners thereof, and against all persons interested or claiming an interest therein, warning them at some early day, to be named therein, to appear and answer this libel of information, and that an order of publication may be made in the usual form, and that all due proceedings being had, this honorable court may be pleased to decree for the condemnation and forfeiture of the said property to the use and ownership of said United States, and of Charles Black, sr., informant.

And he prays for such further relief as the court is competent to give in the premises.

(Signed) RUFUS WAPLES,
U. S. Att'y for the Eastern District of Louisiana.

Filed July 8th, 1865.

3 *Order of publication.—Issued July 10th,* 1865.

United States circuit court for the sixth judicial circuit and eastern district of Louisiana.

UNITED STATES
vs.
THE STEAMER GEN'L BEAUREGARD, her tackle, apparel, &c. } No. 3,613.

Whereas the steamer Gen'l Beauregard, her tackle, apparel, &c., described in the libel filed by the district attorney, and now of record in this court, and all the right, title, and interest therein has been seized by the marshal of the United States for the eastern district of Louisiana, by virtue of an act of Congress, approved on the sixth day of August, in the year of our Lord one thousand eight hundred and sixty-one, entitled "An act to confiscate property used for insurrectionary purposes;" and whereas the United States attorney for the eastern district of Louisiana did, on the 8th day of July, A. D. 1865, file a libel of information in this court, praying the condemnation of said property under the act aforesaid, and that process of monition issue against the owner and owners of said property, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information.

It is, therefore, on this 10th July, in the year of our Lord eighteen hundred and sixty , ordered that notice be given to the owner and owners of said property, and all persons interested or claiming an interest therein, to appear and answer this information on the 31st day of July, 1865, and show cause, if any they have, why said property and the right, title, and interest therein should not be condemned and sold according to law; and that notice be given by posting a copy of this order upon the front door of the court-house of the district, and by publication in the N. O. Times newspaper twice a week previous to said 31st day of July, A. D. 1865, the first publication to be on or before the 17th instant.

(Signed) E. H. DURELL, *Judge.*

4 *Warrant.*

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the steamer General Beauregard, her tackle, apparel, &c., described in the libel filed by the dist. att'y, now of record in this court, and now libelled by the United States for the causes set forth in the libel pending in the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having or pretending to have, any right, title, or interest in or to the same, to be and appear before a circuit court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said property should not be condemned and sold agreeably to the prayer of the libellant; and how you have executed this warrant, that you make return according to law.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, the 10th day of July, A. D. 1865, and 90th year of the independence of the United States.

(Signed) F. B. VINOT, *D'y Clerk.*

5 *Marshal's return.*

Received July 11th, 1865, and having seized and taken into my possession the within described property on the authority of a previous writ, and posted this warrant, the libel, and the order of the judge on the door of the court-house, and published monition on the 12th, 18th, 22nd, and 29th July, 1865, in the New Orleans Times, a daily paper printed and published in this city.

(Signed) J. J. PREIS, *D'y U. S. Marshal.*

July 31st, 1865.

Monition.

In the United States circuit court for the sixth circuit and eastern district of Louisiana.

UNITED STATES
vs.
STEAMER GEN. BEAUREGARD, her tackle, apparel, etc. } No. 3,613.

In obedience to an admiralty warrant, to me directed in the above-entitled suit, I have seized and taken into my possession the steamboat Gen. Beauregard, her tackle, apparel, and furniture, now libelled by the United States of America for the causes set forth in the libel now pending in the circuit court of the United States. And I do hereby cite and admonish the owner or owners thereof, and all and every person or persons having, or pretending to have, any right,

title or interest in or to the same, to be and appear at a circuit court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the date hereof, to show cause, if any they have or can, why the said steamer, her tackle, etc., should not be condemned as forfeited to the United States, and be sold agreeably to the prayer of libellants, and the proceeds thereof be distributed according to law.

United States marshal's office, New Orleans, the eleventh day of July, 1865.

CUTHBERT BULLITT,
U. S. Marshal.

J'y 12, 18, 22, 29.

6 *Claim of John R. Carrol.—Filed July 8th,* 1865.

THE UNITED STATES
vs.
THE STEAMBOAT GEN'L BEAUREGARD. } No. 3,613.

In the circuit court of the United States for the eastern district of Louisiana.

John R. Carroll, residing in New Orleans, sole owner of the steamboat General Beauregard, intervening for his interest in the said steamboat, appears now before this honorable court, and claims the said steamboat General Beauregard, her tackle, apparel, and furniture, and states that he is the true and bona fide owner of said steamboat, and that no other person is owner.

And therefore the said John R. Carroll prays this honorable court to decree a restitution of the said steamboat General Beauregard, and otherwise right and justice to administer in the premises, and he further swears that he is a loyal citizen of the United States.

(Signed) JOHN R. CARROLL.
(Signed) DURANT & HORNOR,
Proctors.

7mo., 8th, '65.

Sworn to and subscribed before me, this 8th day of July, 1865.
(Signed) F. B. VINOT, *D'y Clerk.*

7 *Answer of John R. Carroll.—Filed July 10th,* 1865.

THE UNITED STATES
vs.
THE STEAMBOAT GEN'L BEAUREGARD. } No. 3,613.

To the honorable the judges of the United States circuit court for the eastern district of Louisiana.

The answer of John R. Carroll to the libel of information filed by the United States district attorney against the steamboat General Beauregard, her machinery, tackle, apparel and furniture, in a cause

of confiscation under the act of Congress of August, 1861, propounds as follows, and says:

To the first article of the libel that he admits the seizure of the steamboat, but denies the legality of the act.

To the second article of the libel he says he admits the various acts of Congress, and proclamations therein mentioned were passed and promulgated as set forth, but he denies that they have any applicability to said steamboat General Beauregard.

To the third article of the libel he answers as to the second.

To the fourth article of this libel and its various subdivisions he says that the same are falsely alleged; the truth being that the said steamboat never was used by the enemies of the United States
8 with the consent of her owners or their lawful agents.

Fifth, that all and singular the foregoing facts and allegations are true and correct.

Wherefore this respondent prays that this honorable court would be pleased to pronounce against the libel of information of the United States district attorney, and decree restitution, condemn the libellants to pay costs, and otherwise law and justice to administer in the premises.

(Signed) J. R. CARROLL.
(Signed) DURANT & HORNOR,
For John R. Carroll.

Sworn to and subscribed before me, this 1st December, 1865.
(Signed) CH'S CLAIBORNE, *Clerk.*

Bond for costs.—Filed July 10th, 1865.

UNITED STATES OF AMERICA, *Eastern District of Louisiana, to wit, ss:*

Personally appearing before me, the undersigned, United States commissioner for the eastern district of Louisiana aforesaid, John R. Carroll, as principal, and E. Conery, as surety, do hereby acknowledge themselves jointly and severally to be indebted unto the United States in the full sum of two hundred and fifty dollars, lawful money of the United States, to be levied of their goods, chattels, lands, and tenements, the use of the said United States, and
9 for the payment whereof they jointly and severally bind themselves, their heirs, executors, and administrators, firmly by these presents.

Whereas, in the matter of the United States *vs.* the steamer General Beauregard, No. 3,613 of the docket of the circuit court of the United States for the eastern district of Louisiana, a libel of information has been filed on behalf of the United States.

This obligation to be null and void on condition that the said John R. Carroll shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages, as shall be awarded by the court, upon the final decree, whether it is rendered in the original or appellate court; otherwise this obligation to remain in full force and virtue.

(Signed) J. R. CARROLL. [SEAL.]
(Signed) E. CONERY. [SEAL.]

Signed and sealed at the city of New Orleans this 10th day of July, 1865, in presence of—

(Signed) CH'S CLAIBORNE,
U. S. Commissioner in and for the Eastern District of Louisiana.

[5-c. U. S. r. stamp, canc'ed.]

Motion and order to bond.—From the minutes of July 10th, 1865.

UNITED STATES
vs.
THE STEAMER GEN'L BEAUREGARD. } No. 3,613.

10 On motion of Durant & Hornor, esqrs., proctors for the claimant, and on suggesting to the court that the said claimant is desirous of bonding the steamer General Beauregard—

Ordered, that the said steamer be appraised by Heartt and Swain, and that the same be delivered to the claimant upon his furnishing a stipulation in a sum exceeding by one-half the appraised value thereof, with good and solvent security, conditioned as the law directs, and upon the payment of the costs of appraisement.

Notice to appraisers.—Issued July 15, 1865.

UNITED STATES CIRCUIT COURT,
Eastern District of Louisiana.

THE UNITED STATES
vs.
THE STEAMER GEN'L BEAUREGARD. } No. 3,613.

To Heartt and Swain:

Take notice, that you have been on the 10th instant appointed appraisers for the purpose of ascertaining the value of the property libelled in this case, and you are to file the report of your appraisement within the shortest possible delay.

By order of the court.

(Signed) F. B. VINOT, *D'y Clerk.*

New Orleans, 15th July, 1865.

10½ *Marshals' return.*

Received July 15, 1865, and same day, month, and year served a copy of this notice on Heartt and Swain, appraisers, in the hands of Richard Swain, one of said appraisers, personally.

July 15, 1865.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

Appraisers' report.—Filed July 15, 1865.

UNITED STATES
vs.
STEAMER BEAUREGARD, tackle, &c. } No. 3,613.

To the honorable the circuit court for the eastern district of Louisiana:

We, the undersigned, prize appraisers to this honorable court, duly appointed and sworn, have the honor to report:

That on the 15th day of July, 1865, we proceeded on board of the st'r Beauregard for the purpose of ascertaining her value, and, after a careful and thorough examination, find that she is about eight years old; built in Cincinnatti 1857; her length is feet inches, breadth of beam feet inches; depth of hold, feet inches; she is 203 tons burden, and on a careful examination of the said boat, her boilers, engines, tackle, and apparel, we do hereby value and appraise the said boat, her tackle, boilers, engines,
11 &c., and find the same in a very ordinary condition, and we therefore appraise the said boat at the sum of forty-six hundred dollars, ($4,600,) cash, and no more.

Given under our hands this fifteenth day of July, 1865.

(Signed) H. G. HEARTT,
U. S. Prize Appraisers, New Orleans.

Appraisers' bill.—Filed July 15, 1865.

UNITED STATES PRIZE COMMISSIONER'S OFFICE,
Appraiser's Department, New Orleans, July 16, 1865.

In the matter of the steamer Beauregard, To appraiser's office, Dr.

For appraisements of st'r Beauregard, $4,600, at 1 per cent. $46 00

12 *Release bond.*

UNITED STATES OF AMERICA, *Eastern District of Louisiana:*

Know all men by these presents, that we, John R. Carroll, of the city of New Orleans, claimant and owner of the steamer Gen'l Beauregard, her tackle, &c., as principal, and Edward Conery, as surety, are held and firmly bound unto the United States, libellant, in the sum of six thousand nine hundred dollars, lawful money of the United States of America, for the payment whereof to the said United States we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents.

Witness our respective names and seals, hereunto affixed by us at New Orleans this 15th day of July, one thousand eight hundred and sixty-five.

Whereas an admiralty warrant was lately issued out of the honorable the circuit court of the United States of America for the eastern district of Louisiana, at the suit of the United States *vs.* the st'r Gen'l Beauregard, her tackle, apparel, and furniture, and numbered 3,613 on the docket of the said court, commanding the marshal to seize

and take into his possession the said steamer, her tackle, &c., which has been seized accordingly, but has been released from said seizure, and delivered to John R. Carroll, the claimant, thereof, by reason of the signing, sealing, and delivery of these presents, said John R. Carroll having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court.

Now the condition of the above obligation is such that if the said claimant and sureties abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree, rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

(Signed) J. R. CARROLL. [L. S.]
(Signed) E. CONERY. [L. S.]

Signed, sealed, and delivered in presence of—
(Signed) CH'S CLAIBORNE,
U. S. Commissioner.

5-ct. int. rev. stamp affixed and cancelled.

13 Edward Conery, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, and is worth the sum of six thousand nine hundred dollars over and above all his just debts and liabilities.

(Signed) E. CONERY.

Sworn to and subscribed before me, this 15th day of July, 1865.
(Signed) CHA'S CLAIBORNE, [SEAL.]
U. S. Commissioner.

[5-ct. revenue stamp, cancelled.]

Filed July 15, 1865.

14 UNITED STATES CIRCUIT COURT, *Eastern District of Louisiana, ss:*

CLERK'S OFFICE, *New Orleans, July* 15, 1865.

UNITED STATES
vs.
THE STEAMER GEN'L BEAUREGARD. } No. 3,613.

The President of the United States of America to the marshal of the eastern district of Louisiana, or his lawful deputy, greeting:

Whereas, John R. Carroll, of this city of N. O., claimant and owner of said steamer, hath this day filed a claim thereto, on behalf of himself, and obtained leave of court to bond the said steamer, &c., and which said claim is of record in this office:

You are hereby authorized to release the said steamer Gen'l Beauregard from seizure, and her to restore to the possession and custody of said claimant, he having given bond conditioned as required by the order of court, and otherwise complying with the rules of the court, &c., and make return hereon of your doings in the premises.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at New Orleans, this 15th day of July, A. D. 1865, and the 90th year of the independence of the United States.

(Signed) F. B. VINOT, *D'y Clerk.*

15 *Marshal's return.*

Received July 15, 1865, and on the same day, month, and year released unto the claimant named within the steamer Gen'l Beauregard, her tackle, apparel, and furniture, he having furnished bond before the clerk of the U. S. circuit court, as set forth herein, and on the same day the said claimant did take possession of the said boat, her tackle, apparel, and furniture.

(Signed) J. J. PREIS, *D'y U. S. Marshal.*

New Orleans, July 16, 1865.

Filed July 16, 1865.

16 *Notice to take testimony.—Issued September 18th,* 1866.

United States circuit court, eastern district of Louisiana.

UNITED STATES
vs.
STEAMER GENERAL BEAUREGARD. } No. 3,613.

To Durant & Hornor, esqs.:

You are hereby notified that testimony will be taken in the above-entitled cause on Wednesday, the 20th day of September, 1865, at the clerk's office of this court, at 12 o'clock m., on behalf of libellant.

(Signed) F. B. VINOT, *Dy. Clk.* [SEAL.]

New Orleans, September 18th, 1865.

Marshal's return.

Received September 18th, 1865, and on the same day, month, and year served a copy of this notice on Durant & Hornor, esq., by leaving it at their office, in the hands of their porter, Henry Tillman.

(Signed) J. J. PREIS,
Dy. U. S. Marshal.

Returned Sept. 19th, 1865.

17 *Testimony for libellants.—Filed September 20th*, 1865.

UNITED STATES
vs.
STEAMER GENERAL BEAUREGARD. } No. 3,613.

Present: District attorney for United States; Durant & Hornor for claimant.

Depositions taken before Charles Claiborne, U. S. commissioner, on the 20th day of September, 1865:

F. V. Cellos, a witness for libellants, being duly sworn, deposes and says:

I reside in New Orleans. I know the steamboat General Beauregard. I have known her for six or seven years. She was formerly called the E. M. Bicknell. I did not see her in the years 1861 and 1862. I saw her in 1863 or 1864, in the month of March. The first I saw of her was at Fort de Russey; she had on board a cargo of corn, nothing else. I do not recollect seeing any confederate troops on board of her. Part of her crew might have been detailed men. The cargo on board of her belonged to the confederate government. It was brought from Alexandria to Fort de Russey, about 60 miles below Alexandria. This corn was, I know, for the use of troops. Captain Carroll was the captain of the boat at that time. The
18 corn was in bulk. I saw the corn landed. Confederate soldiers and employees assisted in discharging the cargo. There were at that time about four thousand men at Fort de Russey. This trip, I think, was in March, 1863, or March, 1864. I was in the quartermaster's department at that time, in the confederate service. It was part of my duty to see that the corn was hauled up from the river to where the troops were stationed.

Capt'n Carrol was there at the time. I think the General Beauregard made two trips. One with a cargo of corn, the other I am not certain as to what she had on board. I never saw munitions of war on board of her. She was engaged by the confederate government for about a month—part of March and part of April; after this time she was run by the confederate government. I never saw her transporting confederate troops. I do not know what amount of freight was paid for transporting corn. This corn was actually used by the troops at Fort de Russey.

Cross-examined:

I was a clerk in the quartermaster's department of the confederate army.

I was not a commissioned officer. My duties began on this occasion at Fort de Russey.

These were the first duties I performed as quartermaster's clerk. Before that time I had been a soldier in the cavalry service. Capt'n McClosky, a military captain of the confederate army, re-
19 ported that he was loading this corn at Alexandria, and that

she would bring it to Fort de Russy. I did not see it loaded at Alexandria. I was not there to see it. When the boat reached Fort de Russy, Cap'n Carroll reported in person. I think there was a confederate officer on board in charge of the corn. I do not recollect who he was. The corn was discharged from the boat, that is all I know about it. Subsequently the boat was in charge of some confederate officer, with the design of being sunk at the mouth of Tone's bayou, or at the cut-off, about twenty miles below Shreveport, with a view of impeding the progress of the United States naval forces. General Dick Taylor was in chief command at Alexandria and Fort de Russy. I do not know whether or not he had proclaimed martial law.

Captain Carrol could not have opposed the employment, by the confederate authorities, of his boat, if he had been disposed so to do.

Re-direct:

I know that the corn was hauled from the river bank to the place where the troops were stationed.

(Signed) FERD. V. CELLOS.

Sworn to and subscribed before me, this 20th day of September, 1865.

CHS. CLAIBORNE,
U. S. Commissioner.

20 Geo. D. Hite, a witness for libellants, duly sworn, deposes and says:

I reside in New Orleans. I have known the boat now called the General Beauregard for about six years. I think she left the city of New Orleans for the Ouachita river a few days before the city surrendered to the U. S. forces. She was then running in the Ouachita trade. She was called the Ouachita packet, and ran as far as Camden, Arkansas. Previous to the surrender of the city she carried no government freight of any kind. After the surrender of the city, one year after, in April, 1863, I saw her at Shreveport. I think it was in April, 1863. It was, I am certain, the spring of 1863. She had nothing on board, perfectly empty. I have never seen confederate troops on munitions of war, or commissary or quartermasters' stores on board of her.

Cross-examined:

I know that she laid in the Ouachita river, I think, below Camden, prior to the time she was ordered to the Red river. I saw her there. I know the quartermaster of the trans-Mississippi department, Wm. H. Thomas, acting chief quartermaster at that time, ordered her from the Ouachita river, to report at Shreveport on the Red river. He told me so. I think General Kirby Smith had at that time proclaimed martial law. I resided at Shreveport. Capt'n Lew
21 More had charge of her at Shreveport. He was her captain when she was running in the Ouachita river, before the war,

and was her captain when she arrived at Shreveport. During these dates it was a matter of no consequence whether martial law was proclaimed or not; steamboat men had to do as the military said and ordered them to do or to go with their boats.

Re-direct:

There was no force there to prevent a man from hiring his boat to the confederacy if he thought proper so to do, but if the confederacy wanted the services of a boat, the owner or captain had to obey.

(Signed) GEO. D. HITE.

Sworn to and subscribed before me, this 20th day of September, 1865.

CHS. CLAIBORNE,
U. S. Commissioner.

John C. Marsh, a witness for libellants, duly sworn, deposes and says:

I reside in New Orleans. I came to this city in 1834. I know the steamboat General Beauregard, formerly the Bicknell. I saw her in 1861, when she was making her trips up and down the river. I never saw troops on board of her in 1861. I cannot say whether she had munitions of war on board of her at that time or not.

22 I did not see her again until 1863. She came to Shreveport; she came light; in 1863, when I was there, she was ordered to take corn from Shreveport to Alexandria; the corn was for confederate troops. She made one or two trips. I do not know who was captain on board of her. About that time she was purchased, it was reported, by the confederate government, for the purpose of being sunk at the cut-off, with a view of obstructing the navigation of the river and preventing the naval forces of the United States from getting up the river. After they concluded not to sink her, she came back to Shreveport and was thoroughly repaired, under the charge of Capt'n McMasters. After being repaired her first trip was down the river under a flag of truce, with Col. Szimanski. She brought down prisoners to be exchanged. She returned from the mouth of the river to Shreveport with confederate prisoners, who were exchanged at the mouth of Red river. Capt'n McMasters was in the confederate service and had charge of the river transportation. I have heard that captain Lew Moore was owner of the Bicknell, (counsel for claimants objects to the last answer as being hearsay.) When the Bicknell came to Shreveport, she was commanded by Captain Lew Moore. I did not see him afterwards. I lost sight of him. I think her name was changed in 1861, before the fall of the city. I do not know who changed her name.

Cross-examined:

23 At Shreveport I was carrying on a foundry and machine shop. It was a private shop. I held no office under the confederate government or State of Louisiana. I do not know that she was purchased by the confederate government. It was so reported,

it was town talk. (The counsel for claimant objects to the words 'it was so reported," "it was town talk," going down as not responsive to his question.)

I know she was ordered to take corn to Alexandria, because I saw her take it. I did not hear her ordered to take corn. I saw no written order to that effect. In point of fact, I do not know that she was ordered to take corn to Alexandria; I only know that she took it. I saw part of it put on board. Passing about town, I saw the corn going on board. I saw the hands of the boat putting the corn on board. The mate of the boat superintended the hands. There were persons at the warehouses delivering the corn. I know not who they were. I do not know their names. The corn came out of the confederate government warehouse. I know not whether or not Capt'n McMaster was in the military service. I know he acted under the orders of General Kirby Smith.

(Signed) JNO. C. MARSH.

Sworn to and subscribed before me, this 20th September, 1865.

(Signed) CHS. CLAIBORNE,
U. S. Commissioner.

24 *Notice to take testimony.—Issued September 21st, 1865.*

United States circuit court, eastern district of Louisiana.

UNITED STATES
vs.
THE STEAMER GEN'L BEAUREGARD. } No. 3,613.

To Rufus Waples, esq., U. S. dist. att'y:

You are hereby notified that testimony will be taken in the above-entitled cause, on Friday the 22nd day of September, 1865, at the clerk's office of this court, at 2 o'clock p. m., on behalf of claimant.

(Signed) F. B. VINOT, *D'y Clerk.* [SEAL.]

New Orleans, Sept'r 21st, 1865.

Marshal's return.

Received Sept'r 21st, 1865, and same day, month, and year, served a copy of the within notice on Rufus Waples, esq., district attorney, by leaving it at his office in the hands of Mr. John Fahy, his clerk.

Sept'r 21st, 1865.

(Signed) J. J. PREISS,
D'y U. S. Marshal.

25 *Testimony for claimant.—Filed September 22nd, 1865.*

UNITED STATES
vs.
THE STEAMER GEN'L BEAUREGARD. } No. 3,613.

Present: District attorney, for U. S.; Durant and Horner for claimant.

Testimony taken before Charles Claiborne, U. S. commissioner, on the 22nd day of Sept'r, 1865:

W. W. Withenburry, a witness for claimant, being duly sworn, deposes and says:

I am about 51 years old. I have never resided permanently in Louisiana. I reside in Ohio. I am a steamboatman. I have been in the steamboat business for twenty-five years on the Mississippi and its tributaries. From the beginning of eighteen hundred and sixty-one until May, eighteen hundred and sixty-four, I was in Louisiana, Texas, and Arkansas, and was not out of the so-called confederacy. Since that time I have been back and forth between this place and Ohio. I know the steamboat formerly called the General Beauregard, now called the Bicknell. I first saw her in 1861, she was running in the Ouachita river. I know that she was laid up in that stream at a point called Roark's landing, in the State of
26 Arkansas; she had been lying there a long time, and I saw her lying there in the spring of 1862 and in the summer of the same year.

There seemed to be a portion of the crew on board of her.

I saw Captain Lew Moore on board of her, and sometimes saw him at Camden, generally at Camden.

She was moved from there late in 1862 or beginning of 1863.

She was put to carrying corn for the confederate government on Ouachita river and Bayou Mason.

I knew the crew on board. Captain Lew Moore appeared to be in charge of her. I saw a quartermaster's clerk on board of her; a sort of supercargo; I do not remember his name.

This employment of the boat continued up to the latter part of the spring of 1863.

I know nothing positive whether this employment was voluntarily or forced.

I know of no circumstance that would lead me to form a conclusion either way, except seeing her discharge her cargo into the hands of confederate officers and receiving other cargoes from them.

Late in the spring of 1863 when at Alexandria, and laid up at the foot of the falls, I know that the confederate quartermaster's
27 department required a boat to go above the falls to receive a load of corn to be carried to Fort de Russey below Alexandria. The department applied to the Beauregard to go up.

Captain Carroll was there at the time. He objected to her making the attempt, and applied to me about my opinion about the safety of attempting to go over the falls, and I gave it as my opinion that she

could not do it. The confederate officers then took her and said "she had to make the attempt, and that the necessity of the department required it; that the garrison was starving, and she had to make the attempt." She did make the attempt and failed. She went above Alexandria after that; I saw nothing more of her.

The country was at those times under military control, and every body in it.

(Signed) W. W. WITHENBURRY.

Sworn to and subscribed before me, this 22d day of September, 1865.

(Signed) CHS. CLAIBORNE,
U. S. Commissioner.

Notice to take testimony.—Issued Nov. 22d, 1865.

United States circuit court, eastern district of Louisiana.

28 UNITED STATES
vs.
STEAMER GENERAL BEAUREGARD. } No. 3,613.

To Durant and Hornor, esq'rs.:

You are hereby notified that testimony will be taken in the above-entitled cause on Monday, the 27th day of November, 1865, at the clerk's office of this court, at 2 o'clock p. m., on behalf of libellants.

New Orleans, Nov. 21, 1865.

(Signed) F. B. VINOT, *D'y Clerk.*

Marshal's return on the above notice.

Received November 22d, 1865, and on same day, month, and year served a copy of the within notice on Durant & Hornor, esq'rs, at their office in this city, in the hands of J. W. Hornor, esqr., personally, he being one of said firm.

New Orleans, Nov. 23d, 1865.

(Signed) J. J. PREIS, *D'y U. S. Marshal.*

Hearing and submission of cause.—From the minutes of Dec. 1st, 1865.

29 THE UNITED STATES
vs.
STEAMER GENERAL BEAUREGARD, &c. } No. 3,613.

This cause was called for trial. District attorney for the United States, Durant and Hornor for claimant. And after hearing pleadings, evidence, and arguments, the court took time to advise.

Note of evidence.—Filed December 1, 1865.

UNITED STATES
vs.
STEAMER GENERAL BEAUREGARD, &c. } No. 3,613.

Note of evidence.

DEC. 1st, 1865.

Major Richardson and E. Emory, witnesses sworn on behalf of claimant.

Dist. att'y offered testimony for libellants, filed September 20th, 1865.—(See pages 17, 20, 21.)

Durant & Horner offered testimony for claimant, filed September 22d, 1865.—(See page 25.)

30 *Final judgment.*

UNITED STATES
vs.
STEAMER GENERAL BEAUREGARD, &c. } No. 3,613.

For reasons orally assigned by the court, it is ordered, adjudged, and decreed that the steamer General Beauregard, her tackle, apparel, and furniture be, and the same are hereby, condemned as forfeited to the United States.

And it appearing that the libelled property has been bonded by the claimant in pursuance to the order of 10th July, 1865, that said property was appraised at four thousand six hundred dollars, and was delivered to said claimant, who removed the same from the custody of the marshal and control of this court.

It is further adjudged and decreed that the claimant, John R. Carroll, as principal, and E. Conery, as surety on the bond, be condemned in solido to pay to the United States the sum of four thousand six hundred dollars, the appraised value of said boat, with
31 five per centum per annum interest from date till paid, and costs of suit.

Judgment rendered Dec. 2d, 1865.
Judgment signed Dec. 8th, 1865.
(Signed) E. H. DURELL, *Judge.*

Motion and order for appeal.—From the minutes of Dec'ber 9, 1865.

UNITED STATES
vs.
STEAMBOAT GENERAL BEAUREGARD, &c. } No. 3,613.

On motion of Durant & Hornor, att'ys for John R. Carroll and Edward Conery, against whom as principal and security on the bond given in this case to release the steamboat General Beauregard, judgment final has been rendered herein for the sum of forty-six hundred dollars and interest, on the 2d December, 1865, and on showing to the court that movers are informed that there is error to their prejudice in said decree, and that they desire to take a suspensive appeal therefrom.

It is therefore now ordered that a suspensive appeal to stay execution be granted to the said John R. Carroll and Edward Conery, on their giving bond and security in the sum of sixty-nine hundred dollars, conditioned as the law directs, and on complying with all the requisites of the law; that this appeal be made returnable at
32 the next term of the Supreme Court, at Washington; and that John K. Goodloe, attorney of the United States for this district, be duly notified and cited to appear and answer to this appeal.

Bond for appeal.—Filed December 11th, 1865.

Know all men by these presents, that we, John R. Carroll and Edward Conery, of New Orleans, as principals, and William Moran, of New Orleans, as surety, are held and firmly bound, jointly and severally, unto the United States of America in the full sum of seven thousand dollars, lawful money of the United States of America, to be paid to the said United States of America, or assigns, for which payment, well and truly to be made, we bind ourselves and each of us, by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 9th day of December, in the year of our Lord one thousand eight hundred and sixty-five.

Whereas the above bounden John R. Carroll and Edward Conery have this day presented a motion to the honorable the circuit court of the United States for the sixth circuit, holding sessions in and for the eastern district of Louisiana, praying for a suspensive appeal to stay execution in the case of the United States *vs.* steamer
33 General Beauregard, No. 3,613 of the docket of said court.

Now, therefore, the condition of the above obligation is such, thatwe the above bounden John R. Carroll and Edward Conery shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of their estate, real or personal, if they be cast in the appeal; otherwise that the said William Moran, surety, shall be liable in their place.

(Signed) J. R. CARROLL. [SEAL.]
(Signed) E. CONERY. [SEAL.]
(Signed) WM. MORAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
(Signed) F. B. VINOT, *D'y Cl'k.*

William Moran, surety on the foregoing bond, being duly sworn, says that he resides in the city of New Orleans, and is worth the sum of seven thousand dollars over and above his just debts and liabilities.

(Signed) WM. MORAN.

Sworn to and subscribed this 11th day of December, 1865.
(Signed) F. B. VINOT, [SEAL.]
D'y Clerk.

5-ct. int. rev. stamp affixed and cancelled.

34 UNITED STATES OF AMERICA:

Circuit court of the United States, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Charles Claiborne, clerk of the circuit of the United States for the sixth circuit and eastern district of Louisiana, do hereby certify that

the foregoing 33 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of the United States *vs.* the steamer General Beauregard, her tackle, &c., No. 3,613 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 10th day of February, A. D. 1866.

[SEAL.] CHS. CLAIBORNE, *Clerk.*

[5-ct. int. rev. stamp.]

I, E. H. Durell, United States judge for the eastern district of Louisiana, do hereby certify that Charles Claiborne, whose name is signed to the above certificate as clerk of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court. That said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 10th day of February, A. D. 1866.

E. H. DURELL, *Judge.*

[5-cent. int. rev. stamp.]

35 UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to John K. Goodloe, esq., attorney of the United States for the eastern district of Louisiana, greeting:

UNITED STATES
vs.
THE STEAMER GENERAL BEAUREGARD, her tackle, apparel, &c., &c. } No. 3,613.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a motion praying for a suspensive appeal, filed in the clerk's office of the circuit court of the United States for the 6th circuit and eastern district of Louisiana, wherein John R. Carroll and Edward Conery are appellants, and the United States of America are defendants, to show cause, if any there be, why the judgment rendered against the said John R. Carroll and Edward Conery, as in said motion mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fourteenth day of December, in the year of our Lord one thousand eight hundred and sixty-five.

E. H. DURELL, *Judge.*

Marshal's return.

Received December 15th, 1865, and same day, month, and year served a copy of the within citation of appeal on J. K. Goodloe, esq., U. S. district attorney, personally, at his office in the custom-house building of this city.

J. J. PREIS,
D'y U. S. Marshal.

New Orleans, Dec'r 15th, 1865.

In the Supreme Court of the United States,

DECEMBER TERM, 1867.

STEAMER GENERAL BEAUREGARD, John R. Carroll, claimant,
vs.
UNITED STATES.
No. 159.

Appeal from the Circuit Court of the United States for the eastern district of Louisiana.

STATEMENT FOR THE UNITED STATES.

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1. This is one of a class of cases now upon the docket of this court involving the question of the liability of steamboats owned in Louisiana and running during the rebellion upon the interior waters of that State, as carriers of freight and troops for the rebel government, to confiscation under the provisions of the act of August 6, 1861, as property knowingly used or employed in aiding and abetting the late insurrection. All the cases present the same general features, with specific differences in the circumstances under which the employment occurred, and in the details of the evidence presented for the consideration of the court.

In some of the cases the court below acquitted the

property, and in others, not perceptibly different in their essential character, entered decrees of condemnation. We are not informed by any opinion of the district judge what rule or principle of decision asw applied by him in the determination of this class of cases.

2. This vessel is claimed by John R. Carroll, a resident of New Orleans. She was formerly called the "Bicknell," and, before the occupation of New Orleans by the national forces, ran between that city and Camden, Arkansas, on the Ouachita river. A few days before New Orleans surrendered, she left the city for the Ouachita river. (Rc., p. 12.) She did not return to New Orleans it seems; and in 1863 we find her employed in transporting corn for the rebel army from Shreveport to Alexandria, on the Red river. (Rec., pp. 11, 12, 13.) The corn was owned by the Confederacy, and was delivered, on one occasoin, as proved, at Fort de Russey for the use of the rebel troops there.—(Rec., p. 11.)

There seems to be no doubt, then, about the fact that her owner did employ her in aid of the rebellion. Was the use of the boat a guilty one within the intendment of the act of August 6, 1861?

The defence is, that the service was performed under compulsion, and that the vessel was not "knowingly" used in the manner and for the purpose stated. But the evidence to establish this specific fact is extremely feeble. It is much less direct and abundant than the evidence, on the same point, in most of the other cases of this class that we have examined. F. V. Cellos says: "Captain Carroll could not have opposed the employment by the Confederate authorities

of his boat if he had been disposed so to do."—(Rec., p. 12.)

Geo. D. Hite says, that the quartermaster of the trans-Mississippi Department *ordered* her to report at Shreveport: "Steamboat men had to do as the military said and ordered them to do, or to go with their boats."—(Rec., pp. 12, 13.)

Withenbury says: "She was ordered to go over the falls for a load of corn, to be carried to Fort De Russey, and was compelled by military officers to make the attempt."

This is nearly, if not quite, all the evidence to prove the alleged duress. It is manifestly insufficient. The court will require that it shall be informed, much more fully and particularly, in regard to the circumstances under which the alleged military power and control were exerted upon this vessel and her owner, before it will judicially say that the owner is not guilty of a violation of the act of 1861.

This vessel remained in the Ouachita after the recovery of New Orleans, and her owner made no effort, so far as appears, to escape with her from the rebel region.

It is not shown that he offered resistance of any sort to the Confederate authorities. He was, probably, perfectly willing to hire his boat to them if better employment was not obtainable elsewhere. It is not sufficient to show that if he had refused to hire his boat she might have been, or would probably have been, impressed, or taken forcibly into the service. He must show clearly either that he was compelled to run the boat in the rebel service under actual threat of personal violence, or that forcible possession was

taken of the vessel by the rebel authorities, and that she was thus employed by them in the hostile service against his will and without his consent.

He must negative every presumption of consent on his part to the unlawful employment of his property.

3. There is ground, under the proofs here, to doubt the ownership of the claimant. It seems the vessel was called the "E. M. Bicknell" before she left New Orleans; and that her name was afterwards changed to the "*General Beauregard.*" (Rec., pp. 11, 13.) It is stated by the witness, Marsh, that it was reported that she had been purchased by the Confederate government for the purpose of being sunk, to obstruct the Red river. He further states that after they concluded not to sink her, she was repaired at Shreveport, under the charge of Captain McMasters, a rebel officer of the Quartermaster's Department.—(Rec., p. 13.)

Independently of the significancy of her last name, these facts seem to show that she became the property of the rebel government during the time she remained in the rebel region.

The record, it may be further observed, is deficient in proof of the ownership of the claimant.

J. HUBLEY ASHTON,
Special Counsel of United States.

Supreme Court of the United States.

No. 159.

THE STEAMBOAT GENERAL BEAUREGARD,
APPELLANT,

vs.

THE UNITED STATES, APPELLEES.

This boat was libelled in the United States circuit court in Louisiana, for condemnation and forfeiture, under the act of August 6, 1861. (12 Statutes at Large, p. 319.) (See Rec., pp. 1 to 3.)

The only article of the libel applicable to the case, as brought out by the facts, is the fourth, which charges that the owners of the boat "*knowingly consented*" to her use in aid of the insurrection.

On this point the answer of the owner of the boat was, that she was never used by the rebels with his consent. (See Rec., p. 6)

POINTS.

1. There is no dispute about the fact that the boat was in the possession and service of the rebels; the contest turns entirely on the question whether that possession and service was *consented* to by the owner, Carroll.

2. F. V. Cellos, witness for the United States, says the boat was engaged and run by the Confederate Government, (Rec., p. 11,) and adds: "Captain Carroll could not have opposed the employment by the Confederate authorities of his boat, if he had been disposed so to do. (Rec., p. 12.)

3. George D. Hite, another witness for the United States, says he saw the boat empty at Shreveport, in April, 1863. (Rec., p. 12.) The rebel quartermaster of the trans-Mississippi department *ordered* her to Shreveport, when Kirby Smith proclaimed martial law, and under this the owners of boats *had to obey*. (Same witness, pp. 12 and 13.)

4. Even on this testimony of the United States, which is substantially all, it is clear no consent on the part of the owner to her use in the rebel service is shown. But the testimony of the claimants shows further, that the owner acted altogether under duress.

5. Whittenbury saw a rebel quartermaster's clerk on board of and in charge of her. (See Rec., p. 15.) He says, also, that when the captain refused a service, the Confederate officers took her by force, and that the country and everybody in it was under martial law. (See Rec., p. 16.)

6. These facts show that there was no such consent to illegal use of the boat as the law considers a proper ground for forfeiture.

All of which is respectfully submitted.

THOMAS J. DURANT,
For Claimant and Appellant.

Supreme Court of the United States.

DECEMBER TERM, 1868,

THE STEAMER CAPITOL, HER TACKLE, &c., *vs.* THE UNITED STATES.

THE UNITED STATES, Appellants, *vs.* THE STEAMER NINA SIMMES, HER TACKLE, &c.

THE STEAMER GENERAL BEAUREGARD, HER TACKLE, &c., *vs.* THE UNITED STATES.

THE STEAMER TRENT, &c., W. N. WOOD, Claimant, *vs.* THE UNITED STATES.

THE UNITED STATES, Appellants, *vs.* THE STEAMER T. S. CONNOLLY, HER TACKLE, &c.

THE UNITED STATES, Appellants, *vs.* THE STEAMER VIGO, HER TACKLE, &c.

THE UNITED STATES, Appellants, *vs.* THE STEAMER J. M. SHARP, HER TACKLE, &c.

THE STEAMER LOUIS D'OR, HER TACKLE, &c., *vs.* THE UNITED STATES.

THE STEAMER TEXAS, HER TACKLE, &c., *vs.* THE UNITED STATES.

THE STEAMER T. H. HINE, HER TACKLE, &c., *vs.* THE UNITED STATES.

Brief in the above stated cases filed in behalf of the informer.

C. CUSHING, *of Counsel.*

IN THE SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1868.

THE STEAMER CAPITOL, HER TACKLE, APPAREL, &c., P. TARGARONA, *et al.*, Appellants, *vs.* THE UNITED STATES.

The libel of information in this case is filed under the act of Congress, approved August 6, 1861, entitled "An act to confiscate property used for insurrectionary purposes.

From the evidence on the part of the United States, the following facts appear:

In 1861 the steamer libelled in this case was called the Johnson, she was afterwards called the Colonel Terry, and after that she received her present name, the Capitol. In 1863 she carried corn from some point above Alexandria to Alexandria. There were at that time confederate troops at Alexandria. She made several trips at that time, with corn on board. She was then called the Colonel Terry, (Marth, wit., Transcript, p. 12,) formerly called the W. S. Johnson and the Colonel Terry. In 1864 she made two trips, with corn belonging to the confederate government, to Cotille Landing. The corn was hauled to General Taylor's troops. P. Targarona was her captain. (Cellos, witness, p. 12.)

In 1863 and 1864 she was in the employ of the confederate authorities; she had corn on board; she discharged a portion of it at Alexandria, and the other portion at Spanish Fort on Red river; there were confederate troops at Alexandria at that time, and a small force at Spanish Fort; she returned with government coal; the confederate government had large ordnance works on Cross Bayou, near Shreveport. (Hite, wit., Transcript, p. 14.)

She was in the employment of the confederate government

since the fall of 1861. She carried confederate troops in the summer and fall of 1861. In 1862 she was engaged in the same business. In the summer of 1863 and in the fall of the same year she was running on Red river, and in the winter of 1863 from Red river to Vicksburg, and occasionally employed by the confederate government. In the winter and spring of 1863 she had on board commissary and quartermaster's stores belonging to the confederate government. In the commencement of the war her principal owner was named Hammond, the next owners were Captain John Smoker and John Hall. Troops were on board of her at Grand Bayou, while Captain Hammond commanded her. (Withenburgh, evidence, Transcript p. 15.)

Such is the case as presented by the evidence on the part of the United States, and if the evidence had stopped here, it is difficult to imagine a clearer case of condemnation.

The claimant's evidence is in substance as follows:

Claimant, Targarona, bought the Capitol in 1864, so as to be exempt from military duty. The claimant was opposed to going into the confederate military service. He laid up the Capitol because he was opposed to running her in confederate service; laid up for nine months; might have been repaired much sooner. Claimant loyal to the United States; always opposed to the confederates; looked upon as a Yankee by his neighbors; tried to sell out and go to New Orleans; was conscripted and had to buy a substitute for $3,000; was again conscripted, and then bought the boat; said he would die before carrying arms against the United States. The boat lengthened some fifteen feet. (Ray, witness, p. 21.)

In February, 1864, claimant bought the boat. She was laid up in July, 1864; laid up until surrender; looked on claimant as opposed to confederate rule; talked so as to injure confederate cause by discouraging people. The people did not look on claimant as a good confederate. (Anderson, witness, p. 21.)

In 1864 boat on several occasions ordered into confederate service. (Sherry, witness, p. 18.)

Captain Targarona refused to obey a military order about

the boat, because he was short of provisions and water scant. Claimant not paid for services of his boat by witness, or any voucher issued. (McCloskey, p. 20.)

In 1864 the Colonel Terry reported at Alexandria once or twice under military orders. Witness never saw steamboat paid; gave no vouchers. (Mason, witness, p. 20.)

The first remark we would make upon this evidence for the claimant, Targarona, is, that it only undertakes to cover the period of time elapsing from February, 1864, the time when he purchased the steamer. As to all the previous years of the war, the case is unaffected by the claimant's evidence.

The evidence for the United States is clear, distinct, emphatic, that previous to 1864, as far back as 1861, the Capitol, first called the W. S. Johnson, and afterwards the Colonel Terry, was in the service of the confederate government. *No effort has been made in the evidence to show that this long period of service previous to Targarona's purchase was under duress.* No effort whatever has been made in the evidence to show that Hammond, the first owner, or Smoker & Moore, who succeeded Hammond in the ownership, were loyal citizens, from whence the inference of duress might be inferred. For all we know to the contrary, they may have been the most violent rebels imaginable. In the total absence of any evidence to show duress in reference to the employment of the boat previous to February, 1864, when Targarona purchased, or loyalty in her previous owners, the conclusive case made by the evidence for the United States remains entirely unanswered, and the condemnation of the boat follows as a matter of course. In the absence of any evidence to the contrary, we are bound, from the proof of employment in the confederate service previous to February, 1864, to believe that the service was voluntary, and the then owners of the boat were in sympathy with the rebellion.

If we are correct in this view of the case, it would seem to be unnecessary to consider the case any further. But out of abundant caution we will do so.

The claimant, Targarona, insists that the employment of the

boat in the confederate service during the time he owned it was under duress.

It becomes necessary, therefore, to consider the law of duress applicable to this case, and the facts in evidence bearing on this point.

As to the law of duress—

In the case of the United States *vs.* Vigol, (2 Dallas, p. 347,) where prisoner, indicted for treason, Mr. Justice Patterson, charging the jury upon the defence of duress, says, "That the fear which the law recognizes as an excuse for the perpetration of an offence must proceed from an immediate and actual danger, threatening the very life of the party. The apprehension of any loss of property by waste or fire, or even an apprehension of a slight or remote injury to the person, furnishes no excuse. If, indeed, such circumstances could avail, it would be in the power of every crafty leader of tumults and rebellions to indemnify his followers by uttering previous menaces; an avenue would be forever open for the escape of unsuccessful guilt; and the whole fabric of society must inevitably be laid prostrate."

In a case before the supreme court of Pennsylvania, where the defendant was indicted for high treason in joining the English army, Chief Justice McKean says: "He [the prisoner] remained, however, with the British troops for ten or eleven months, during which he might easily have accomplished his escape: and it must be remembered that in the eye of the law nothing will excuse the act of joining an enemy but the fear of immediate death; not the fear of any inferior personal injury, nor the apprehension of any outrage upon property. But had the defendant enlisted merely from the fear of famishing, and with a sincere intention to make his escape, the fear could not surely always continue, nor could his intention remain unexecuted for so long a period."

Respublica *vs.* McCarty, 2 Dallas R., p. 87.

"Duress, arising from the threats of destruction of vessel and cargo, cannot be admitted to avoid a contract of ransom, where the captain was justified by probable cause.

Maisonnaire *vs.* Keating, 2 Gallis. C. C. R., 337.

A party who offers an excuse for violating a penal statute must make out the *vis major*, under which he shelters himself, so as to leave no reasonable doubt of his innocence.

Brig Struggle *vs.* The United States, 9 Cranch, 71.

The necessity which excuses for a breach of a statute must be instant and imminent.

The Argo, Hewes claimant, 1 Gallis. C. C. R., 150.

Fear, to excuse a person guilty of an alleged crime, must be fear of death; such a fear as a man of ordinary courage and fortitude might yield to.

United States *vs.* Haskell, 4 Wash. C. Ct., 402.

"Although the fear of having houses burnt or goods spoiled is no excuse in law for joining and marching with rebels, yet an actual force upon the person and *present* fear of death may form such excuse, provided they continue all the time during which the party remains with the rebels."

18 State Trials, pp. 393, 394.

In the case of Regina *vs.* Tyler, Lord Denman, C. J., said: "The law is, that no man, from a fear of consequences to himself, has a right to make himself a party to committing mischief on mankind. * * It cannot be too often repeated, that the apprehension of personal danger does not furnish any excuse for assisting in doing an act which is illegal."

8 Carrington and Payne's R., p. 616; English Common-Law Reports, vol. 34, p. 553.

If it be only a moral force put upon B, as by threatening him with duress or imprisonment, or even by an assault to the peril of his life, in order to compel him to kill C, it is no legal excuse.

Russell on Crimes, vol. 1, sec. 17, p. 17.

See further, 4 Black. Com., p. 27.

1 Hale, 433.

I East., P. C., c. s. s. 12, p. 225.

It is important to keep in mind that there is a distinction

in the law as to the duress which will relieve from criminal acts, as distinguished from civil acts. The law of duress in relation to crimes sufficiently appears from the citation of authorities here made. In reference to acts done *civiliter*, the law is as follows:

Lord Coke enumerates four instances in which a man may avoid his own act by reason of menaces—

1st. For fear of loss of life.
2d. Of member.
3d. Of mayhem.
4th. Of imprisonment.

2 Inst., 483.

Sir William Blackstone devides duress into two kinds—

1st. Duress of imprisonment.

Where a man is illegally deprived of his liberty until he signs the obligation.

2d. Duress per *minas*.

Which is either for fear of loss of life, or else for fear of mayhem, or loss of limb, and this must be upon sufficient reason.

1 Black. Com., 136.

That there should be a distinction between the character of the duress which excuses in criminal and civil acts, is manifest from the slightest consideration.

As regards crimes, especially those involving the public safety, as treason or rebellion, it is the interest of the State, that every possible barrier should be interposed against their perpetration; hence, then, the necessity for laying down the most rigorous rules in regard to alleged duress. The law must be so laid down as to protect the State and punish the criminal. In reference to contracts, which in some form or other embrace every case of duress *civiliter*, public policy requires that all contracts shall be free; and hence the law is so framed on the subject of duress as to insure this policy.

To illustrate, take the following case of a person who was held in illegal imprisonment for ten minutes in a private room

in London, and to obtain his liberty signed a bond, under a plea of duress; the bond would be declared invalid. Suppose the same person, under the same circumstances of duress, should, in order to be released from it, fire upon the Queen of Great Britain, and thus take her life; is it not plain that the plea of duress would not be listened to in defence.

Hence the law most wisely applies a different rule to the plea of duress, when it is interposed as a defence in criminal matters to what it does in civil matters.

We consider the law is properly laid down by Chief Justice McKean, when he says: "That in the eye of the law nothing will excuse the act of joining an enemy but the fear of immediate death."

The claimant in this case committed this very act "of joining an enemy." In so acting, he perpetrated the highest crime known to our laws. In the struggle of his country for her very life, he lent his active aid to destroy her.

If he were under indictment for treason, because of "joining the enemy," he would be in the precise category of crime described by Chief Justice McKean, when he said nothing would excuse but the fear of immediate death.

We are aware that the present cause is not an indictment against Targarona for treason, but it is a proceeding which involves the legal consequences of that crime. The present proceeding is against the steamboat, the instrument with which Targarona committed his act of treason; and we submit, the same principles of law are to govern the judgment of the court in regard to the steamboat, the instrument of his treason, as if the proceeding were a criminal one against Targarona himself. The steamboat is to be condemned because of Targarona's act, and that act must be regarded in the same light, and determined by the same principles of law in this case as in any other form of legal proceedings in which it might be involved.

We propose now to consider the facts set up for the claimant, to show that his action in the premises was the result of irresistible necessity, which he could not resist from the fear of death.

As a part of his defence, Targarona undertakes to prove

loyalty. It becomes necessary, therefore, to consider the evidence he has introduced as to his loyalty.

Upon this point we would remark, that this is a position readily simulated. In the case of private persons, and in the general demoralization caused by the rebellion South, an unscrupulous man would find no difficulty in producing witnesses to swear to anything he might wish sworn to.

It is further to be noted, that there is not a scintilla of evidence as to actual loyalty in the case. If Captain Targarona had, at an early day of the war, withdrawn from the confederate lines, and shown any active sympathy with the federal cause, his case would have been fully made out. But nothing whatever of this kind occurred: Targarona remained to the end of the war within the lines of the enemy, and rendered no aid to the federal cause.

It is further to be remarked, that his domicil within the rebel lines impressed on him the character of rebel and public enemy.

The Prize Cases, 2 Black. R., 674.
The Venice, 2 Wallace R., 258.
Mrs. Alexander's Cotton, 2 Wallace R., 419.

This general presumption of law is strengthened in his case by the undisputed fact, that, as the owner and captain of the Capitol, he rendered active aid to the military forces of the rebels.

With these remarks, we will now take up the facts in evidence, from which loyalty is sought to be inferred. These facts are as follows:

a. It is said, he bought the Capitol to be exempt from rebel military service. It is difficult to see how this can be interpreted as any proof of loyalty. As captain of the Capitol, he could render far more important services in transporting supplies for the rebel army than as a private soldier. Engaging in the steamboat business would be more agreeable to him personally, as exempting him from the privations and dangers of military service, but could be of no benefit to the United States. The most bitter rebel South, with no taste for camp-

life, might very well prefer to be running a steamboat in aid of the rebellion, to carrying a musket. There is nothing, therefore, in this fact to prove loyalty.

b. It is said he was opposed to going into confederate military service. If that were a proof of loyalty, vast numbers at the South could very readily establish their loyalty. In the same way, large numbers North could be proved to be disloyal; for many North, who wished the rebellion suppressed, had no desire personally to engage in its suppression. This state of mind on the part of Captain Targarona does not prove loyalty.

c. It is said he laid up the Capitol, and from hence loyalty is to be inferred. But as it appears from the evidence that the confederate authorities did not exert themselves very zealously to pay for this steamboat transportation, and as the confederate money in 1864 was of scarcely any appreciable value, we can account for his laying up his boat, on grounds much more selfish than the effort in this side-way of aiding the federal cause. The probability is, that he laid up his boat because it was not profitable to run her. According to the evidence, the boat was greatly enlarged and improved by Captain Targarona, and if the war had continued longer, she was in a condition to render much more efficient services than ever before to the confederate military authorities. The laying up of the boat is, to say the least of it, therefore, a most unsatisfactory evidence of loyalty.

d. It is said he was looked upon as a Yankee, and not a good confederate, by his neighbors. His desire to keep out of the army would naturally account for his neighbors not ranking him very high as a confederate patriot. But his employment in the important position of steamboat captain is proof conclusive that he could not have been regarded as in sympathy with the United States.

e. It is said he tried to sell out and go to New Orleans. The date at which he proposed to do this is not stated. Certainly, until the fall of New Orleans there could have been no difficulty in his doing this. If he only proposed to do this when he became hopeless of the success of the rebellion, it

might illustrate his instinct of self interest, but not his patriotism.

f. Said he would die before he would bear arms against the United States. This must be taken as strongly indicative of his aversion to the military vocation, but it does not prove his loyalty; for, at the same time, he placed him in a position where he could serve the rebellion much more efficiently than in camp.

g. He said he talked discouragingly. There is no proof of the dates of this talk. At no time would it be of any weight to prove loyalty; but towards the close of the rebellion, it is probable vast numbers talked in the same way. It would be very strange if they had not. And if this could be relied upon as proof of loyalty, no doubt the number of loyal citizens South would be much more numerous than generally supposed.

We have thus gone through the facts in evidence relied upon to establish loyalty, and we submit that they are entirely insufficient to establish this essential fact. So much for the question of loyalty.

We now approach the question of duress.

He would remark upon this point, that unless the claimant has made satisfactory proof of loyalty, he cannot invoke the principle of duress, and is utterly without any ground to rest upon. His case, if he stands before the court as a rebel, is simply this: that to escape military service, he voluntarily chose another mode of aiding the rebellion.

As preliminary to the question of duress, we submit:

1. That the claimant is legally incompetent, because of his domicil within the rebel lines during the war, to raise *in this proceeding* the question of loyalty.

The Supreme Court of the United States, in the case of Mrs. Alexander's Cotton, say:

"This court cannot inquire into the personal dispositions of individual inhabitants of enemy territory. We must be governed by the principle of public law so often announced from this bench as applicable alike to civil and international

wars, that all the people of each State or district in insurrection against the United States must be regarded as enemies, until, by the action of the legislature and the executive, or otherwise, that relation is thoroughly and permanently changed.

2. Wallace R., 419.

The court in the same case, remarking on the provision in the act in reference to captured and abandoned property, that the owner, though residing within rebel lines, yet might within two years after the suppression of the rebellion bring suit in the Court of Claims, and on proof of loyalty and ownership recover the proceeds of property taken from him, say: "In this war, by this liberal and beneficent legislation, a distinction is made between those whom the rule of international law classes as enemies." (*Ib.*, p. 422.)

It must be noted, that it is only by special legislation of Congress that loyal owners, residing within rebel lines, are allowed to claim, even after the war, the proceeds of property taken during the war. But for this special legislation there would have been no remedy for loyal claimants residing South. This special legislation *only* authorizes the loyal owners to set up their claim by suit *in the Court of Claims*. A special privilege is granted to them, and a special tribunal is provided for the assertion of their claim. They can make their claim, and prove their loyalty, only in the Court of Claims. In the case of the Capitol, arising in some court, other than the Court of Claims, we submit the claimant is not authorized to prove loyalty; but must rest, at least so far as this case is concerned, under the character of rebel, impressed upon him by his domicil within the rebel lines.

2. If, however, it is open to the claimant to prove loyalty, we submit that, in point of fact, he has not proved it.

In this connection we beg leave to call attention to the act of Congress, approved June 25, 1868, entitled "An act to provide for appeals from the Court of Claims, and for other purposes," which provides as follows:

"SEC. 3. That whenever it shall be material, in *any* suit *or*

claim, before any court, to ascertain whether any person did or did not give any aid or comfort to the late rebellion, the claimant, or party asserting the loyalty of any such party to the United States during such rebellion, shall be required to prove, affirmatively, that such person did, during said rebellion, consistently adhere to the United States, and did give no aid or comfort to persons engaged in said rebellion; and the voluntary residence of any such person in any place where, at any time during such residence, the rebel force or organization held sway, shall be *prima facie* evidence that such person did give aid and comfort to said rebellion, and to the persons engaged therein."

U. S. Statutes at Large, vol. 15.

3. If, however, it be considered that the claimant has proved loyalty, and the question of duress is open for consideration, then we submit that the evidence on the part of the claimant is entirely insufficient to prove the degree of duress necessary in the case.

a. The only duress alleged is that caused by being drafted into the rebel army. Now, it is submitted that the danger arising from this source was not sufficient to excuse claimant for running the Capitol in aid of the rebel army. Being conscripted into the rebel army did not imply that danger of immediate death which would excuse his embarking in the steamboat business. As a soldier, he might not have been engaged in actual battle.

b. If the circumstances amount to duress, yet the claimant cannot plead them, because it was his duty as a loyal citizen to have withdrawn himself at an earlier period from rebel rule. There can be no doubt but that he could, within the first two or three years of the war, have made his escape from rebel rule. Failing to do this, he cannot avail himself of the necessity which ensued from his own want of patriotism.

c. The claimant might have made his escape from rebel service, even after purchasing the Capitol. But there is no evidence that he made any such effort.

d. The claimant makes a merit of laying up his boat and repairing her. But this is a very ambiguous act. There is no evidence that repairs were not necessary for the running

of the boat. The claimant was certainly, by his repairs, making the boat much more efficient than she had previously been. If the war had continued longer, the Capitol, greatly improved as she was by the claimant, would have been in a condition to render the most efficient services to the rebel cause.

In conclusion, there is one pregnant fact to which we would call attention, as indicative of fraudulent concealment on the part of the claimant. It is his changing the name of the Col. Terry to the Capitol. It is a historical fact, that Col. Terry, after whom the boat was doubtless named, was a conspicuous rebel officer. Under this name the boat was run by the claimant. After repairing her, she appeared as the Capitol. Why was this, but for the purpose of fraudulent concealment of her past career.

With these observations, we submit the case.

C. CUSHING,
of Counsel.